



INTERIOR BOARD OF INDIAN APPEALS

Alice Castillo, Ann Dalson, Darrell Simmons, and Rebecca M. Swearingen v.
Pacific Regional Director, Bureau of Indian Affairs

41 IBIA 190 (08/24/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ALICE CASTILLO, ANN DALSON,	:	Order Docketing and Dismissing
DARRELL SIMMONS, and	:	Appeal
REBECCA M. SWEARINGER,	:	
Appellants,	:	
	:	
v.	:	Docket No. IBIA 05-92-A
	:	
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	August 24, 2005

On August 22, 2005, the Board of Indian Appeals (Board) received a notice of appeal from Alice Castillo, Ann Dalson, Darrell Simmons, and Rebecca M. Swearingen (Appellants), through Dennis G. Chappabitty, Esq. Appellants seek review of the alleged failure of the Pacific Regional Director, Bureau of Indian Affairs, to decide their appeal from the alleged inaction of the Central California Agency Superintendent, concerning a 1998 list of registered voters for the Paskenta Band of Nomlaki Indians of California. The Board dismisses this appeal as premature.

Appellants filed their appeal with the Board on August 16, 2005, as shown by the date of the postmark. See 43 C.F.R. § 4.310(a) (date of mailing is date of filing). Appellants contend that the Regional Director failed to render a decision, in their appeal from the Superintendent's alleged inaction, "within 60 days after all time for pleadings (including all extensions granted) has expired." Notice of Appeal at 1 (quoting 25 C.F.R. § 2.19(a)).

The documentation provided by Appellants, however, shows that this appeal to the Board is premature. Appellants' letter to the Superintendent, giving notice of their appeal to the Regional Director, is dated May 23, 2005. Assuming that notice of appeal also constituted Appellants' statement of reasons, and that Appellants personally served all interested parties on that same date, those interested parties would have had until June 22, 2005, to file answer briefs. See 25 C.F.R. § 2.11(c) (answer brief must be filed within 30 days of receipt of an appellant's statement of reasons). Also assuming that June 22, 2005, should be treated as the date when the time for pleadings before the Regional Director expired, the 60-day time period for the Regional Director to issue a decision would have been August 22 — 6 days after

Appellants filed their appeal with the Board. Thus, even under the strictest timetable, and assuming that the Regional Director granted no extensions, Appellants' appeal to the Board is premature. Cf. Bellonger v. Aberdeen Area Director, 34 IBIA 49 (1999) (dismissing appeal as premature); Wells v. Aberdeen Area Director, 23 IBIA 7 (1992) (same).

In addition, the Board notes that none of the documentation provided with the notice of appeal indicates that Appellants complied with the requirements of 25 C.F.R. § 2.8 before filing their appeal with the Board. Section 2.19 of 25 C.F.R. provides the 60-day timetable for a Regional Director to issue a decision, but section 2.8 provides specific procedures that would-be appellants must follow before a Regional Director's inaction is appealable to the Board. Even if Appellants had waited until after August 22, 2005, to file their appeal, they would still have had to demonstrate that they complied with the requirements of section 2.8.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal as premature.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge